

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 08-2936 JB

FELIPE DIAZ,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendant's Emergency Request for Furlough, filed June 12, 2008 (Doc. 149). The Court held a hearing on June 17, 2009. The primary issue is whether the Court should grant Defendant Felipe Diaz a furlough for the purpose of seeing and spending time with his newborn son. Because the Court continues to believe that it cannot impose conditions that will sufficiently reduce Diaz' chances of not reporting to be taken back into custody and that sufficiently reduce his risk of danger to the community, the Court will deny Diaz' request in part, but will order the United States Marshals to allow a contact visit at the facility in which he is being held.

PROCEDURAL BACKGROUND

Diaz is in pretrial custody at the Regional Corrections Center ("RCC") in Albuquerque, New Mexico. In a previous memorandum opinion and order, the Court held that the United States had met its burden of persuasion that Diaz presents a potential flight risk. See Memorandum Opinion and Order at 6-7, entered June 8, 2009 (Doc. 143). The Court also expressed concern that, because he was being charged with a drug-trafficking crime, Diaz presented a risk to the safety of the

community. See id. at 7.

Jamie Duran, Diaz' girlfriend, gave birth to their son, Eliah Isaiah Diaz, on Wednesday, June 10, 2009. Duran was released from Presbyterian Hospital on Thursday, June 11, 2009, and is now home.

Diaz requests the Court to grant him a furlough. Diaz requests a one-day furlough for the purpose of seeing and spending time with his newborn child, and to see his girlfriend, Duran, who is currently recovering from childbirth. Specifically, Diaz requests a one-day furlough from 8:00 a.m. until 8:00 p.m., or any other curfew time that the RCC or the Court might impose, to spend time with his newborn son, and for any further relief the Court deems just and proper.

Assistant United States Attorney Joel Meyers does not oppose this request. United States Probation Officer Sandra Day opposes this request.

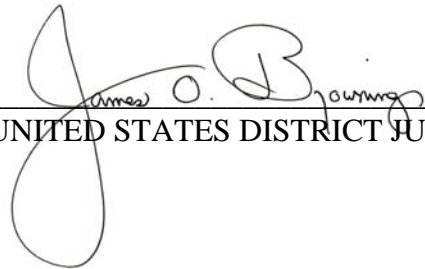
ANALYSIS

For the reasons that the Court stated in its Memorandum Opinion and Order, the Court is reluctant to release Diaz to go home with Duran, even for a very short period of time. On the other hand, the Court is sympathetic to Diaz' situation. Accordingly, the Court will deny Diaz' request for a furlough, but will order a contact visit so that Diaz can see the new baby.

The Court will order that the Marshals arrange a six-hour contact visit at the RCC. During the visit, Diaz will be provided with reasonable privacy and an opportunity to hold the baby. The Marshals have indicated that they can provide him with a comfortable room for at least part of the visit. Duran will be subject to search when she arrives at RCC, and authorities at RCC will be able to check in on Diaz, Duran, and the baby from time to time during the visit. Diaz will also be subject to dry cell following the visit.

IT IS ORDERED that the Emergency Request for Furlough is denied in part without

prejudice. Diaz will not be permitted a furlough at this time, but the United States Marshals will arrange for a six-hour contact visit consistent with this memorandum opinion and order.



UNITED STATES DISTRICT JUDGE

Counsel:

Gregory J. Fouratt
United States Attorney
Joel Meyers
Assistant United States Attorney
Albuquerque, New Mexico

Attorneys for the Plaintiff

Kimberly A. Middlebrooks
Kimberly A. Middlebrooks, Esq.
Albuquerque, New Mexico

Attorney for the Defendant